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THE LAW OF THE ROAD.

In 63 Conn. 150, *O'Neil v. The Town of East Windsor*, we find an instructive and recent opinion construing a statute requiring vehicles meeting on the highway to turn to the right; the duty of a municipality to keep its highways in repair, and the question of negligence. The rules of law applicable to the conduct of drivers of vehicles, and passengers upon the highway, are few, direct and simple, and ultimately resolve themselves into a question of negligence. The case first mentioned was an action to recover for an injury to the plaintiff's horse occasioned by a defect in the highway of the defendant town. The case came up on the facts found and reserved for the opinion of the Supreme Court on the law applicable thereto. Chief Justice Andrews rendered the court's decision:

"The defendant is liable in this action, if at all, only on the ground that it was chargeable with negligence in permitting its highway to be out of repair. And the plaintiff is entitled to recover, if at all, only on showing that he is not chargeable with negligence contributing to the injury of which he complains. Negligence is either non-performance or the inadequate performance of some legal duty.¹ This definition includes in it two subordinate ideas: The idea of duty and the idea of the performance of duty. In any concrete case, whether or not one party owes a duty to another, and if so, what that duty is, is a question of law. Whether or not the duty, if there be one, has been performed, is a question of fact. The idea of the performance of duty suggests a further subdivision. What is the standard by which the performance of a duty is to be measured? When may it be said that a duty has been performed adequately or inadequately? And may it be a question of law or is it a question of fact? Doubtless there may be instances in which the law, either in terms or by the general agreement of the judgments of men, fixes definitely the standard up to which performances must fully come to escape the charge of negligence. In such instances the standard of duty being determinate, and so the same under all circumstances, may be applied as matter of law by the court to the facts found in the case.² These instances are not numerous. In most cases the measure of duty itself varies according to the circumstances which the case presents. The standard then is that of a reasonable man; what would a reasonable man of ordinary prudence have done under the circumstances as they existed in the case? In these instances both

¹ Halland's Jurisprudence, 93; 51 Conn. 392; 53 Conn. 461.

² 63 Pa. St. 17.

the measure of duty and the extent of the performance must be ascertained as facts.³ * * * That it was the duty of the defendant to keep the highway on which the plaintiff was travelling in reasonable repair is admitted. Whether a log lying by the side of and extending to or into the wrought part of the highway rendered it unsafe and defective, is a question of fact to be by the trial court determined.⁴

"So too the duty of the defendant to exercise reasonable supervision over its highways was admitted. Whether or not it had done so is also a question of fact.⁵ On the other hand, the rule of duty imposed by law on the plaintiff was admitted—that he must have acted with reasonable care himself. Whether he did so or not is quite as clearly a question of fact. We do not understand that the statute which provides that drivers of carriages shall turn to the right hand absolutely bars one who turns to the left from all right to recover. Such turning to the left would be a circumstance, and doubtless a very strong one, which the court would consider in deciding whether the party acted with reasonable care."

This decision is given at length because it is recent, correct and concise. Turning now to the definition: A highway is a way over which the public at large have a right of passage, whether it be a carriage way, a horse way, a foot way, or a navigable river.⁶ In *Manchester v. Hartford*⁷ we find it to include street, lane. *Kister v. Reeser*⁸ states that "road" is generally applied to a highway, street, or lane. Bishop in his *Non-Contract Law* § 1022 defines a public way to be every track or expanse, whether of land or water, over which all persons are privileged to pass on foot or in any land or water vehicle. More comprehensive is the definition taken from the cases cited:

"A public way, otherwise termed a highway, is any way, whether upon land or water, over which all the public have the equal right to pass, either generally, or in a defined or limited manner, or upon a condition, or to transport goods.⁹ The method and means used to build and keep up such highways, and the persons or corporations charged with these duties, do not come within this paper. It is enough to say that the several states have statutory regulations in reference thereto, and such legislation has been and is of social and commercial benefit to the several communities. Our present interest is directed to the rights of persons and drivers of vehicles passing to and fro upon the road, whether for business or pleasure, where the road or way has been built. It is the law of the road which deals with this particular question, and this law has been defined to be the law regulating the conduct of travellers

³ 60 Conn. 239; 40 Pa. St. 399; 59 Pa. St. 264; 5 Ohio St. 541; 35 N. H. 277; 4 Richardson Law, 329; 4 Md. 242.

⁴ 28 Conn. 266; 37 Conn. 414; 44 Conn. 117; 46 Conn. 213.

⁵ 39 Conn. 222; 30 Conn. 118.

⁶ 3 Kent, 432.

⁷ 30 Conn. 120.

⁸ 98 Pa. St. 4.

⁹ Bishop N. C. L. § 948, notes.

as between themselves,¹⁰ and the requirement as the side of a highway which drivers of vehicles, horsemen and pedestrians must take in order to make travelling safe and easy." ¹¹

The several States have enacted laws in this behalf. Their general tenor is the same, differences appearing in detail, not in principle. The Tennessee statute as to the side of the highway to which vehicles meeting must turn reads as follows: "Every driver or person having charge of any vehicle on any turnpike or macadamized road, on meeting and passing another vehicle shall give one-half of the road by turning to the right so as not to interfere in passing." The New York statute requires persons so meeting to seasonably turn their carriages to the right of the center of the road. Bicycles and tricycles come within the meaning of the statutes. These statutes announce the American rule. The English rule is directly contrary, it requiring vehicles to turn to the left. Thompson, in his "Highways," considers the English rule more reasonable, for "so long as drivers sit on the right of their vehicles, so long will it be more convenient for meeting vehicles to pass to the left, as the danger of collision between them is thereby lessened."

We cannot see where the difference arises. By the center of the road is meant the center of the "worked" part of the road, but the center of the road when the snow is so deep as to conceal the worked part is the center of the beaten or traveled track.¹² "Seasonably turn" has been construed to mean that the travellers shall turn to the right in such season that neither shall be retarded in his progress by reason of the other occupying his half of the way when he may have occasion to use it.¹³

The result of the decisions on the requirement of the statute to turn to the right is that whenever vehicles meet upon the highway each is to turn to the right to avoid collision or other accident, but it does not require a literal adherence if such would of itself produce the damage which the statute intends to prevent; it is "for cases only wherein by reasonable anticipation of parties meeting the following of it may avoid a collision, not for those exceptional ones in which it would defeat its own purpose." *Flagg v. Hudson*¹⁴ was tort for personal injury by reason of defect in defendant town's highway.

¹⁰ 27 Pa. St. 183.

¹¹ *Anderson's L. D.* 909.

¹² *Earing v. Lansingh*, 7 Wend. 185; 8 Met. 213; *Jacquith v. Richardson*.

¹³ 14 N. H. 310, *Brooks v. Hart*; *Spooner v. R. R.*, 54 N. Y. 230.

¹⁴ 142 Mass. 280 (1886).

A lady and her husband driving upon the highway, the husband holding a rein in each hand. Night dark and foggy. Turns vehicle to the left to avoid danger of defect in the highway and collides with a hack coming from the opposite direction. Held that the defect was the sole cause of the injury and that an action against the town should be sustained. "If," say the Court, "the plaintiff's husband voluntarily turned the horse to the left to avoid the danger of the buggy's tipping over, and this was done under a reasonable apprehension that the buggy would otherwise tip over in consequence of the defect in the highway, and the result was the collision and the injury, the defect would still be considered the cause of the injury, if the plaintiff and her husband used due care." Which is in accord with the principle in *O'Neil v. Windsor*, *supra*.

The statute does not apply to the meeting of railroad cars with common vehicles. The cars can turn in neither direction. Hence, one travelling on a street railroad meeting a car cannot be charged with negligence if he turns to the left; nor is the railroad to be so charged by being on the left hand track.¹⁵ Common vehicles have not the same rights upon the street car track as the car and must get out of the car's way. However, the car must not travel at an unusual rate of speed, and those having the car in charge must act with due care.¹⁶ Some States have statutes providing a penalty for any one wilfully stopping or obstructing the passage of ambulances or vehicles used for the transportation of sick or wounded persons or animals upon any public way.¹⁷ The conduct of vehicles in passing in the same direction is also regulated by statute.

The Tennessee provision reads: "When vehicles on said roads are passing in the same direction, and the driver of the hindmost desires to pass the foremost, each driver shall give one-half of the road, the foremost by turning to the right, the hindmost by turning to the left." This provision relates to vehicles passing, and if there is no other to intercept the driver may use any part of the road which suits him; nor is one driver bound to turn aside in either direction if there is room enough for the hindmost to safely pass. In every instance due care must be used to avoid collision and accident.¹⁸

¹⁵ 51 N. Y. 295; 2 E. D. Smith, 151.

¹⁶ 76 N. Y. 530; 15 N. Y. St. Rep. 824.

¹⁷ N. Y. Penal Code, § 432.

¹⁸ 76 N. Y. 530; 2 Esp. 533, 17 Barb. 94 and 1 Watts, 360 (which last gives the law in almost the same words as the Tennessee statute).

Travellers upon the highway must have their vehicles and harness in roadworthy condition, or are liable for any damage resulting from "insufficiency" in this respect. They have the right to stop by the wayside for their own convenience, but must not interfere with travel nor leave their horses unattended. The statutory regulation requires persons so stopping "to turn so far to the right as to leave at least one-half of the road free, open and unobstructed for other travellers and vehicles."¹⁹ The statutory law of the road relates to the conduct of persons driving vehicles and not to that of foot passengers. The latter may use the road in any way which suits their convenience, crossing directly, diagonally, or at any part. They have no priority in the use of the road over vehicles, but drivers are held to strict care not to ruthlessly or negligently run over or against foot passengers. And in their turn they must conduct themselves with such care so as not to contribute to their own injury, or they cannot recover.²⁰

As to travellers on horseback they are not required to turn in any particular direction, but must act with due care under the circumstances as they present themselves to avoid collision; and, as a matter of custom, one on horseback yields the travelled way to a vehicle.²¹ Persons driving upon the highway are held to a greater degree of care with reference to children and persons laboring under physical or mental disability than to ordinary foot passengers.²² Whether or not the negligence of parents or guardians, or those having children of tender years in their charge, in permitting them to be upon the highway unattended is to be attributed to the children and therefore bar a recovery against travellers using due care, is a question decided both ways in different jurisdictions, and the cases are collated in a note to *Hartfield v. Roper*²³ in Chase's Leading Tort Cases.

Where a highway is obstructed the traveller may go upon adjoining land, taking care to do no unnecessary damage, "passing as nearly to the original way as possible." A number of the States have laws providing a penalty for owners of vehicles hiring drivers addicted to drink. An action in damages also lies. More care is required of drivers in cities and crowded thoroughfares, of course, than upon country roads and sparsely settled places.

¹⁹ Tenn. Code.

²⁰ 41 Barb. 381; 8 C. & P. 691, 373; 96 N. Y. 14; 108 N. Y. 349; 54 N. Y. 343.

²¹ 24 Wend. 465; 2 D. C. (Vt.) 128.

²² 25 L. R. A. 663.

²³ 21 Wend. 615.

We have now touched upon the general rules regulating the law of the road. And Bayard Taylor must have been thinking of them when he wrote in his charming "Hannah Thurston" that a remnant of aristocracy—or, at least, a fondness for aristocratic privilege—still lingers among our republican people, and is manifested in its most offensive form by the drivers of heavy teams. No one ever knew a lime wagon or a wood sled to give an inch of the road to a lighter vehicle.

Israel H. Peres.

MEMPHIS, TENN.